

George I, 1122

note

DRAUGHT of an Act of Parliament for investing the Governour and Council of the Province of *Quebec*, without an Assembly of the Freeholders of the same, with a Power of making Laws and Ordinances for the Peace, Welfare, and good Government of the said Province during the Space of Fourteen Years.

WHEREAS his most excellent Majesty, the now King, by his letters patent, under the great Seal of this kingdom, bearing date the twenty-first day of November, in the fourth year of his reign, and in the year of our Lord Christ, one thousand, seven hundred, and sixty-three, appointing the honourable James Murray, Esquire, to be Captain-General and Governour in chief in and over the province of Quebec in North-America, then lately ceded to the crown of Great-Britain by the French king by the definitive Treaty of Peace concluded at Paris in the month of February of the same year, was pleased to grant unto him, the said James Murray, a power, with the advice and consent of his Majesty's council of the said province, so soon as the situation and circumstances of the said province would admit thereof, and when and as often as need should require, to summon and call general assemblies of the freeholders and planters in the said province :

Preamble.

Power granted to Governour Murray, with the consent of the council of the province, to call an assembly.

And his said Majesty was thereby further pleased to direct the said Governour to require the persons thereupon duly elected by the major part of the freeholders of the respective parishes or precincts of the said province, and so returned, to take the oaths mentioned in a certain act of parliament passed in the first year of the reign of King George the First, and intitled, "*An act for the further security of his Majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales and his open and secret abettors*;" and likewise to make and subscribe

Oaths and declaration to be required of the members of such assembly.

the declaration against the Romish doctrine of transubstantiation mentioned in an act of parliament made in the twenty-fifth year of the reign of King Charles the Second, intiled, "*An act for preventing dangers which may happen from Popish recusants*;" before they are permitted to sit in the said assemblies:

Legislative power granted to the said Governour, to be exercised with the advice and consent of the council of the said province and such assembly.

And was pleased to impower the said Governour, by and with the advice and consent of his Majesty's council of the said province and such assembly as aforesaid, or the major part of them, having previously qualified themselves in the manner aforesaid, to make, constitute, and ordain, laws, statutes and ordinances for the public peace, welfare, and good government of the said province, and of the people and of the inhabitants thereof, and of such other persons as shall resort thereunto, and for the benefit of his said Majesty, his heirs and successors, taking care that the said laws, statutes, and ordinances should not be repugnant, but, as near as may be, agreeable, to the laws and statutes of this kingdom:

The like power and directions were afterwards granted to Governour Carleton.

And afterwards his said Majesty was pleased to give the same powers, authorities, and directions to Guy Carleton, Esquire, the present Governour in chief of the said province, by other letters patent under the great seal of Great-Britain to the same purport and effect as those above-mentioned:

Difficulty of procuring an assembly qualified as above, by reason of the general prevalence of the Romish superstition.

And whereas it hath not hitherto been found practicable, by reason of the general prevalence of the Romish superstition amongst his Majesty's new Canadian subjects in the said province, to summon and call a general assembly of the freeholders and planters in the same, that are willing to qualify themselves to sit in such assembly in the manner above-mentioned by taking the oaths above-mentioned, and taking and subscribing the declaration aforesaid, without too much restraining the freedom of election of the said new subjects by reducing them to a necessity of chusing Protestant Representatives, of whom it may often happen that they shall have but little knowledge, in preference to Roman Catholicks of their neighbourhood and antient acquaintance, in whom they may place a great confidence: and for divers other reasons it is not thought expedient as yet to summon an assembly in that province:

Inexpediency of calling any assembly at present.

Want of a sufficient legislative authority in the Governour and council without an assembly, for the good government of the province.

And whereas no power of making laws and ordinances for the said province, hath hitherto been granted by his said most excellent Majesty, to the Governour and council of the said province only, without the concurrence of an assembly of the same, by either of the above-mentioned two commissions of Captain-General and Governour in

in Chief of the said province, or by any other instrument under the great seal of this kingdom: but only an instruction hath been given by his said Majesty, to his said Governours, under his Majesty's signet and sign-manual, communicating or purporting to communicate, to the said governours a certain very limited legislative authority, to be exercised by them by and with the advice and consent of the council of the said province only, without any assembly, to wit, an authority to make such rules and regulations as shall appear to be necessary for the peace, order, and good government of the said province, taking care that nothing be passed or done that shall any ways tend to affect the life, limb, or liberty of the subject, or to the imposing any duties or taxes: and this legislative authority has been found, by the experience of several years, to be too narrow for the purposes of good government in the said province:

And whereas it will therefore contribute to the welfare and good government of the said province for the time to come, until such time as it shall be thought expedient by the King's Majesty to summon a general assembly of the freeholders of the same, that a more ample legislative authority should be delegated to his Majesty's Governour and council of the same: and, for that purpose, that the number of members of the said council (which has hitherto been only twelve,) should be considerably increased; and that their offices of counsellors to his Majesty for the said province should be made independant of the Governour of the same: to the end that they may not only act with freedom in their deliberations for the good of the said province, but also be generally thought to do so by his Majesty's subjects in the same, and may, in consequence of their just and wise conduct in the exercise of this high authority for the welfare and good government of the said province, become the objects of general esteem and reverence in the same:

And whereas the establishment of such a legislative council in the said province is not likely to give any disgust, or offence, to those of his Majesty's antient British subjects who are already settled in the said province, or who may hereafter resort thither, but rather to be thought a just and necessary measure by them, and much less dangerous to their liberties and welfare than the immediate constitution of any assembly of the freeholders and planters of the said province, if, (contrary to the directions of his Majesty's commission of Captain-general and Governour in chief of the said province, above-mentioned,) any Roman-Catholic members should be admitted

Expediency of delegating a more ample legislative authority to the Governour and council only.

And making the said council more numerous than it is at present, and independant of the Governour.

Such a legislative council is likely to be more agreeable to the British inhabitants of the said province than an assembly into which the Roman-catholics shall be admitted.

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Provided that they are only impowered to make laws, or ordinances, but not to impose taxes:

And that such legislative council be continued only for a small number of years, and till it is found expedient to summon an assembly of protestants.

And such a legislative council is likely to be more agreeable to the Canadians in the said province than an assembly consisting of only protestant members.

Of the government of Canada during its subjection to the French King.

The Governour.

The Intendant.

The bishop of Quebec.

The Superior council.

Power of the Intendant and superior council to make regula-

into it; provided the authority delegated to such legislative council be only that of making laws and ordinances for the welfare and good government of the said province, and not that of imposing any duties, or taxes, on the inhabitants of the same, which they conceive to be a power much more liable to be abused than the former, and consequently less fit to be intrusted to any persons in the said province, (of what rank or personal character whatsoever,) that are not the express representatives of the freeholders and inhabitants of the same; and provided also that the establishment of such legislative council be made only for a small number of years, and until it shall be thought practicable and expedient to erect a protestant assembly in the said province, agreeably to his Majesty's commission of Captain-general and Governour in chief above-mentioned, and to the general practice observed in all the other British provinces in North America:

And whereas the establishment of such a legislative council in the said province is likely to be more agreeable to his Majesty's new Canadian subjects in the same than the constitution of an assembly of the freeholders and planters of the said province that should consist only of protestant members, agreeably to the directions of his Majesty's commission of Captain-general and Governour in chief above-mentioned; by reason that in the present state of the said province, and during the general prevalence of the Roman-Catholic religion in the same, very few of the said Canadians could become members of such assembly:

And whereas in the time of the French government of the country of *Canada*, or *New France*, of which the aforesaid province of Quebec then made only a part, the authority of the French king was intrusted principally to three officers of great distinction; to wit, first, the military governour, called *Governour and Lieutenant-general for the king in the said country*; and, secondly, the principal officer of the civil government in the same, called the *Intendant of justice, police, and revenue in the same*; and, thirdly, the *Bishop of Quebec*; and a council nominated by the said French king, called the *Sovereign council*, or *Superiour council, of Quebec*, which consisted of the said three great officers and twelve other members, of whom eleven were laymen, and one was in holy orders:

And the said Intendant of justice, police, and revenue, was authorised by his commission from the said French king, not only to exercise a very great judicial power in the said country in all matters whatsoever

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soever appertaining to the administration of justice, both criminal and civil, but also to exercise a considerable degree of legislative power in the same, namely, to make, in conjunction with the said sovereign, or superiour, council, of Quebec, all such regulations as he should judge to be necessary for the general police, or good government, of the said country; and, in case he should judge it to be more expedient for the service of the French king to proceed herein without the said council, to make the said regulations by his own single authority, without the concurrence of the said council, if the said regulations related only to civil matters:

tions for the general police, or good government of the said country.

Power of the Intendant to make such regulations by his own single authority in civil matters.

And many regulations of great importance were, accordingly, made in the said country by the said Intendants and superiour councils, and by the said Intendants alone, without the said councils, which were cheerfully submitted to by the inhabitants of the said country, and were carried into execution in the same:

Many important regulations were made for the said country by the said Intendants and superiour councils.

But the said Intendants and superiour councils were never empowered by the said French king to impose any duties, or taxes, on the inhabitants of the said country: but the same were imposed only by the said French king himself by his own edicts:

But the said Intendants and superiour councils were not empowered to impose taxes in the said country.

And whereas the establishment of a numerous legislative council in the said province of Quebec, made independant of the Government of the same, and restrained from imposing any duties, or taxes, on the inhabitants thereof, in the manner above-mentioned, bears a considerable resemblance to the said former method of government in the said province by the authority of the Intendant and superiour council of Quebec, during the subjection of the said province to the French king; and is evidently less likely than the said former method of government to be abused or perverted to ambitious or oppressive purposes, by reason that the power thereby delegated to such legislative council, to make laws and regulations for the welfare and good government of the said province, will be intrusted to a greater number of counsellors than the said superiour council of Quebec was composed of, and that the Governours of the said province will in no case whatsoever be empowered to make any of the said laws and regulations alone, or without the concurrence of the said council, as the said Intendants were formerly authorised to do:

The establishment of such a legislative council, as is above-mentioned, bears a resemblance to the afore-said method of government, by the Intendants and superiour councils, used in the said province in the time of its subjection to the French king.

But is less likely to be abused to purposes of oppression.

And therefore there is great reason to suppose that his Majesty's new Canadian subjects in the said province, (who were formerly used to the said method of government and legislation by the Intendants and

And therefore there is reason to hope that his Majesty's new

Canadian subjects will be satisfied with the establishment of such a legislative council.

superiour council of Quebec, and were well pleased and satisfied therewith,) will greatly approve, and be fully satisfied with, the method of government herein before-mentioned by the governours of the said province and a numerous and independant legislative council; and will esteem the establishment of such a council to be a just, and prudent, and salutary measure in the present circumstances of the said province:

Delegation of a legislative authority to the Governour and council of the said province only, without an assembly of the freeholders in the same, for the space of seven years.

I. IT IS THEREFORE ORDAINED AND ENACTED by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in parliament assembled, that for the space of seven years, to be computed from the first day of January in the year of our Lord Christ, one thousand, seven hundred, and seventy-four, it shall be lawful for his Majesty's Captain-general and Governour in chief of the said province of Quebec, or, in his absence, the Lieutenant-Governour, or Commander in chief, of the same, for the time being, by and with the advice and consent of his Majesty's council of the said province only, and without any assembly of the freeholders and planters of the same, to make, constitute, and ordain, laws, statutes, and ordinances for the public peace, welfare, and good government of the said province, and of the people and inhabitants thereof, and of such other persons as shall resort thereunto, and for the benefit of his said Majesty, his heirs and successors, taking care that the said laws, statutes, and ordinances shall not be repugnant, but, as near as may be, agreeable, to the laws and statutes of this kingdom, in the same manner as the said James Murray, by virtue of his commission above-mentioned, might have done with the consent of both the council and assembly of the said province.

Provided that they shall not have the power of imposing duties, or taxes.

II. PROVIDED always, and IT IS HEREBY FURTHER ENACTED, that none of the said laws, statutes, or ordinances, shall in any degree tend to the imposing any duties, or taxes, on the inhabitants of the said province; and that, so far as any of them shall have any such tendency, they shall be utterly void and of no effect or authority whatsoever.

Number of members of this legislative council.

They shall all take the usual oaths and declaration against transubstantiation.

III. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that the said council of the said province shall for the future consist of thirty-one members resident in the said province, who shall qualify themselves for the said offices by taking the oaths mentioned in a certain act of parliament passed in the first year of the reign of King George the first, and intitled, "*An act for the further*

the security of his Majesty's person and government, and the succession of the crown in the heirs of the late prince^s Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors;" and by making and subscribing the declaration against the Romish doctrine of transubstantiation mentioned in an act of parliament made in the twenty-fifth year of the reign of King Charles the second, intituled, " *An act for preventing dangers which may happen from Popish recusants*;" before they are admitted to sit in the said council.

IV. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that, in order to give validity to any new ordinance that shall be passed by the said council of the said province of Quebec in pursuance of the authority granted to them for that purpose by this act of parliament, it shall be necessary that there be present at the passing of every such ordinance at least seventeen members of the said council; and that those of the members of the said council present on such occasion who shall approve and give their votes for such ordinance shall, in testimony of such their assent to it, subscribe their names to the original transcript of such ordinance, which shall be kept among the records of the said council, and likewise to two other copies of the same, which shall be transmitted with all convenient dispatch to his Majesty's Secretary of state for North-America, in order to be laid before his Majesty in his privy council for his approbation or disallowance.

Number of members necessary to make ordinances.

And every ordinance shall be signed by the members who vote for it.

V. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that no person shall be capable of being a member of the said council that is not compleatly thirty years old; and that the members of the said council shall be appointed to the said office of counsellor to the King's Majesty for the said province, either by his Majesty himself by letters patent under the great seal of Great-Britain, or under his privy seal, or by an instrument in writing under his signet and sign manual, or by his Governour in chief, Lieutenant-Governour, or commander in chief of the said province for the time being, by letters patent under the public seal of the said province: and that the said counsellors shall not be either removed from the said offices of counsellors to his Majesty for the said province, or suspended from the exercise of the said offices for any time, how short soever, by the Governour in chief, or Lieutenant-governour, or commander in chief, of the said province, but only by the King's Majesty

Age required in the members of the said council.

Manner of their appointment to the said office.

Manner in which they may be removed from it.

Majesty himself, his heirs and successors, by his or their order in council.

VI. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that, whensoever the Governour, or Lieutenant-governour, or commander in chief, of the said province shall think proper to summon a meeting of the council of the same, in order to deliberate concerning any new law, or ordinance, which shall appear to be necessary for the welfare and good government of the said province, in pursuance of the authority granted to him by this statute, he shall publish a proclamation for that purpose, giving due notice of the day on which such meeting of the said council shall be holden, in the printed news-paper of the said province, called the *Quebec gazette*, at least fourteen days before the day appointed for the meeting of the said council. And all ordinances that shall be made by the Governour and the said council without such previous notice in the said public news-paper of the day on which the said meeting of the said council is to be holden, shall be utterly void and of no effect whatsoever, any thing herein before mentioned to the contrary hereof in any wise notwithstanding.

Fourteen days notice shall be given in the *Quebec gazette* of every meeting of the said legislative council.

VII. And IT IS HEREBY FURTHER ENACTED, that in every meeting of the said legislative council of the said province for the purpose of making new laws, or ordinances, for the welfare and good government of the same, it shall be lawful for every member of the said council freely to propose and bring in, to the said council, any bill that he shall esteem fit to be passed into a law, or ordinance, in order that it may be first considered by the said council, and passed by them, and then proposed to the Governour of the said province for his assent; as well as for the Governour of the said province to propose any bill that he may think useful and fit to be passed into a law, to the said council for their consideration and assent. And a short account, or memorial, of every bill so presented by any member of the said council shall be entered by the clerk of the said council amongst the proceedings of the same, even though the said bill should not be approved by a majority of the said council, or, being approved by such majority, shall not receive the Governour's assent.

Every member of the said legislative council shall be at liberty to bring any bill into the same, as well as to assent to a bill proposed to the said council by the Governour.

And a memorial thereof shall be entered amongst the records of the said council.

VIII. And, in order to encourage the several members of the said council to be diligent and regular in their attendance at the meetings thereof, and to defray the expences they may incur by such attendance, and

and likewise to reward them for their useful labours therein for the public benefit of the said province, IT IS HEREBY FURTHER ORDAINED AND ENACTED, that it shall be lawful for the Governour, or Lieutenant-governour, or commander in chief, of the said province, to issue his warrant to the Receiver-general of the public revenue of the same, to pay to each member of the said council that shall attend any meeting of the same for the purpose of making laws and ordinances for the welfare and good government of the said province, and shall continue at the said meeting until the end, or dissolution, of the same, such sum of money, not exceeding two pounds of lawful money of Great-Britain, as he shall think proper, out of such monies arising within the said province, and liable to be applied to public uses in the same, as shall then be in the hands of the said Receiver-general; taking care that on every such occasion an equal sum of money shall be paid to every counsellor who shall have so attended at the said meeting, without any distinction, or partiality; and that the money paid on this account to any one member of the said council in the space of one whole year shall never exceed the sum of one hundred pounds of lawful money of Great-Britain, although the meetings of the said council, at which such member shall have attended, in that space of time, should happen to be more than fifty.

The members of the said council shall receive out of the public revenue of the said province a reward for their trouble in attending the meetings of the same, not exceeding two pounds sterling to each member for every attendance.

But no one member of the said council shall receive more than one hundred pounds in one year on this account.

IX. And IT IS HEREBY FURTHER ENACTED, that, if any member of the said legislative council of the said province shall at any time be absent from the said province for the space of one whole year without having obtained a leave of absence from the Governour in chief, or Lieutenant-governour, or commander in chief, of the said province, in writing, and caused the same to be entered among the records of the said council before his departure from the said province, his office of counsellor to the King's Majesty for the said province shall thereupon cease and become vacant at the end of a year from the day of his departure from the said province; so that, if he should afterwards return into the said province; he shall be incapable of sitting and voting in the said council, unless he shall be again empowered to do so by means of a new appointment to the said office.

Every member of the said council, who shall be absent from the said province for the space of a year, without the Governour's leave in writing for that purpose, shall thereby lose his office of counsellor.

And, if any member of the said council after having obtained a leave of absence in writing from the Governour of the said province, or the Lieutenant-governour, or commander in chief of the same, and having caused it to be duly entered in the records of the

Absence with the leave of the Governour, if continued for a year beyond the time al-

lowed by the
said leave,
shall have the
same effect.

the said council before his departure from the said province, shall be absent from the said province for the space of one whole year beyond the time allowed by such leave of absence, his said office of counsellor to the King's Majesty for the said province shall thereupon cease and become vacant at the expiration of the said year beyond the time allowed in his said leave of absence, in the same manner as if he had at first gone out of the said province without any leave of absence from the Governour thereof, and had continued to be absent from the same for more than a whole year.

Three years
absence from
the province,
(even with
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our's leave
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have the same
effect of de-
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member of
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of a counsellor.

And no leave of absence from the said province given by the Governour, or Lieutenant-governour, or commander in chief, of the same, (though it shall have been given in writing, and entered among the records of the said council, as is above directed) shall enable any member of the said council to retain his said office of counsellor of the said province during more than three years absence from the same: but at the end of the said three years his said office of counsellor shall cease and become vacant, and he shall be incapable of sitting and voting in the said council without a new appointment to the said office of a counsellor of the said province.

Where the
council of the
said province
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them the day
before they
meet: and
seven mem-
bers shall be
a sufficient
number to do
business.

X. PROVIDED always, and IT IS HEREBY FURTHER ENACTED, that in all other matters, not relating to the making, or passing, any laws, statutes, or ordinances, for the said province, but to the advising and assisting the Governour, or Lieutenant-governour, or commander in chief, thereof in the execution of those parts of the commission of Captain-general and Governour in chief of the said province in which the said Governour is directed to act with the advice and assistance of the council of the same, it shall not be necessary for the Governour of the said province, or, in his absence, for the Lieutenant-governour, or commander in chief, of the same, for the time being, to summon the whole legislative council above-mentioned by a proclamation published in the Quebec gazette fourteen days before the time appointed for the meeting thereof, in the manner above directed: but it shall be sufficient for the said Governour, or Lieutenant-governour, or commander in chief, of the said province for the time being, to send particular summonses in writing to the several members of the said council who live in the town in which the said council is to be assembled, or within the distance of two miles from it, or, (if there are more than twelve of the members of the said council resident in the said town, or within the said distance of it,)

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to any twelve of the said members that he shall think fit, on the day immediately preceeding that on which the said council is to be assembled: and, if seven, or more, of the said counsellors so summoned shall attend at the said meeting, it shall be lawful for the said Governour of the said province, or, in his absence, for the Lieutenant-governour, or commander in chief, of the same, to proceed to the execution of the aforefaid parts of the said commission of Captain-general and Governour in chief of the said province, by the advice and assistance of the said seven, or more, members of the said council, or the major part of them; any thing herein before-mentioned to the contrary hereof in any wise notwithstanding.

A REMARK concerning the Power of Taxation in the said Province.

IT remains to be considered by whom the taxes necessary to be levied in this province should be imposed. Now this, it is apprehended, may best be done by the parliament of Great-Britain itself. A small duty of about three-pence a gallon, upon spirituous liquors imported into the province from Great-Britain; another somewhat larger (as, perhaps, six-pence a gallon,) upon those imported from the West-India islands; and a third, larger than either of the former, (as, perhaps, a shilling a gallon,) upon those imported from the other British colonies in North America; and a moderate excise (of, perhaps, six-pence a gallon,) upon those made in the province itself; are generally considered by persons who are acquainted with the said province as the fittest taxes to be raised in it. And many people are of opinion that these taxes would be useful to the said province not only in the first and most obvious manner, to wit, by producing a revenue for the maintenance of its civil government, but also by checking the great drunkenness that now prevails in it from the immoderate use of spirituous liquors by the Canadians, which is the consequence of its present low price. Next to these duties, many people are of opinion that a certain small tax upon houses that was levied in the time of the French government in the said province, and which is therefore, perhaps, in strictness of law, already legally due to the King's Majesty, ought to be revived; and that a small tax (of perhaps three shillings a head by the year,) ought to be imposed on superfluous horses, of which it is generally allowed there is much too great a number in this province. When these, or any other more convenient taxes, are once established by a competent

petent authority, such as that of the British parliament, it will, probably, not be necessary to raise any more taxes for several years; perhaps for the whole time that this above-mentioned legislative council shall continue in the province: and therefore the government of the province may be very well carried on by the said legislative council, though they are not invested with a power of taxation. But this is not the case with the power of making laws and ordinances: for that is a power which there will probably be continual occasion to make use of for the due regulation of the said province: and therefore there is a kind of necessity to delegate that authority to some respectable body of men, (either council or assembly,) residing in the said province.

And, if, (though it does not seem probable) it should become necessary to lay any further taxes upon the inhabitants of the said province during the continuance of the said legislative council, and before the establishment of a protestant assembly, in the same, the said new taxes might be imposed, as well as the first taxes above-mentioned, by the authority of the British parliament: and, in this case, it might be convenient, (in order to furnish the parliament with that degree of information concerning the situation and circumstances of the said province, which would be necessary to enable them to exercise this power with judgement and ability,) that the Governour and legislative council of the said province, whenever they thought that any new tax ought to be imposed, should draw up a plan, or proposal, for the imposition of such new tax, setting forth the occasion there was for raising money, the quantity of money necessary to be raised, and their reasons for advising that it should be raised by the particular tax which they propose and recommend: and that they should publish the said plan, or proposal, in the Quebec gazette, for the information of the inhabitants of the said province, and to give them an opportunity of remonstrating against it, in case they disapprove it; and at the same time should send over a copy of it to his Majesty's Secretary of State for America, to be laid before his Majesty in council, and, if approved of by him, to be brought into the house of commons, and passed into an act of parliament. With these precautions it seems reasonable to suppose that the property of the inhabitants of this province would be as secure against a wanton, or injudicious, exercise of the power of taxation, as if the taxes were to be granted only by an assembly of their own choosing.

